

### REMARKS

We have amended claims 1-7 and have added claims 8-15.

#### Prior Art Rejections

The Examiner rejected independent claim 1 and dependent claims 2-3, under 35 U.S.C. §102(e), as anticipated by Peterson (U.S. Pat. 6,735,793).

We submit that Peterson fails to teach or suggest a threshold “including a collapsible outer shell that allows unobstructed passage across the threshold when in a compressed state,” as recited in amended claim 1. Rather, Peterson discloses a prefabricated block for use in construction of a water-resistant curb. It appears that the Examiner assumes that because Peterson lists “foam” as a possible base material for his water resistant curb that the curb is collapsible. We submit that a full and thorough reading of the Peterson patent suggests that, in fact, the blocks that form his curb be “made from a strong, rigid and generally water resistant substrate material.” (Column 3, lines 63-64; see also column 5, lines 16-18, 49-50).

Furthermore, Peterson teaches a water-resistant curb preferably averaging 5.5 inches in height and meant to be stepped over. (Column 4, lines 2-5, 51-52). A curb intended to be even somewhat rigid and of that height would hardly allow unobstructed passage when in a compressed state. Additionally, Peterson suggests that the blocks be covered by ceramic tile. (Column 5, lines 10-12; column 6, lines 10-18, 32-34). The rigidity of the Peterson curb is also suggested by the inclusion of a vertical slot to receive a pan or liner. (Column 5, 51-56 ; column 6, 22-23, 37-38). Another slot is provided to act as an alignment channel for a guide material upon which the blocks are positioned. (Column 6, lines 1-7). “Examples of a guide are a board or an elongated sheet metal or plastic metal.” (Column 6, lines 40-42). Such design provisions teach away from a threshold including a collapsible outer shell.

Finally, although Peterson discloses that his blocks include a cavity, it is not to enable compression of the blocks, as required by applicants’ claims. Rather, Paterson’s cavities are intended “to reduce the amount of material required to form each block.” (Column 5, lines 64-65). Specifically, Peterson teaches cavities in the water-resistant blocks “so long as they do not

significantly compromise the strength and/or rigidity of the block.” (Column 5, line 65 through column 6, line 1). Therefore, it is clear from an overall reading of Peterson that there is no disclosure of a threshold “including a collapsible outer shell that allows unobstructed passage across the threshold when in a compressed state,” as required by the claims. Certain embodiments of applicants’ invention include:

[a]mong other advantages, [that] the water retention dam has the ability to absorb the impact energy of a rolling wheelchair or foot, while maintaining water within the shower during use. The water retention dam is particularly advantageous for persons with temporary or permanent disabilities where use of a conventional shower would be more difficult or impossible. (Page 1, lines 19-23 of applicants’ specification).

As discussed above, the Peterson patent says nothing about providing such advantages.

The Examiner also rejected dependent claims 5-7 as being unpatentable over Peterson in view of Blitch (U.S. Pat. 3,855,642), which was cited as disclosing the use of adhesive tape for attaching a splash guard to a wall. We submit, however, that Blitch adds nothing to the feature found to be missing in Peterson. Specifically, Blitch does not describe or suggest a collapsible outer shell that allows unobstructed passage across the threshold when in a compressed state, as required by the claims. Thus, because claims 2-7 depend from independent claim 1, we submit that these dependent claims are patentable for at least the same reason that independent claim 1 is patentable.

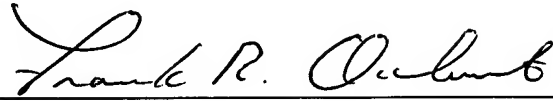
Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket Number 16884-002001.

Applicant : Kevin Ross et al.  
Serial No. : 10/824,849  
Filed : April 15, 2004  
Page : 7 of 7

Attorney's Docket No.: 16884-002001

Respectfully submitted,

Date: JUNE 21, 2005

A handwritten signature in cursive script, reading "Frank R. Occhiuti", written over a horizontal line.

Frank R. Occhiuti  
Reg. No. 35,306

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906

shower dam ver b.doc